



WISCONSIN

DEPARTMENT OF WORKFORCE DEVELOPMENT

Division of Economic Support

Bureau of Welfare Initiatives

**TO: Economic Support Supervisors
Economic Support Lead Workers
Training Staff
FSET Administrative & Provider Agencies
Child Care Coordinators
W-2 Agencies**

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BWSP OPERATIONS MEMO

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Non W-2 ☐ **W-2** ☐ **CC** ☒

PRIORITY: High

SUBJECT: CHILD CARE PROVIDERS
1. OFFENSES AFFECTING CAREGIVER ELIGIBILITY
2. REVISIONS TO HFS 12

CROSS REFERENCE: BWSP Operations Memo 00-02.

EFFECTIVE DATE: Immediately

PURPOSE

This memo provides the most recent list of Offenses Affecting Caregiver Eligibility that became effective February 2000. This memo also provides information on the most recent changes to HFS 12 regarding reporting responsibilities and the conduct of rehabilitation review.

BACKGROUND

1999 Wisconsin Act 9 (the biennial budget) made several changes to §48.685 and §50.065, Wis. Stats. (the Caregiver Law). These changes were effective October 29, 1999. Administrative Rule HFS 12 had been, in large part, made obsolete by those statutory changes. Consequently, the Department of Health and Family Services is repealing and recreating HFS 12 to bring its rules for operation of Caregiver Law into conformity with the revised statutes. This is being done by emergency order.

The Offenses List, HFS 12, and forms related to the Caregiver Background Check law can be found at the Caregiver Background Check website, www.dhfs.state.wi.us/caregiver/index.htm.

NEW OFFENSES LIST

The only change to the Offenses List is the new requirement to do a mandatory “look behind” when there is a conviction for the following:

940.19 (1)	Misdemeanor battery	940.195.....	Battery to an unborn child
940.20	Battery, special circumstances	941.30.....	Reckless endangerment
942.08	Invasion of privacy	947.01	Disorderly conduct
947.013	Harassment		

The law requires certifying agencies to make a good faith effort to obtain conviction information, which are the criminal complaint and the judgement of conviction. This information should be included in the provider’s file. This information should be evaluated to determine if the conviction substantially relates to the job of caring for children and if so, certification can be denied.

REPORTING BACKGROUND CHANGES AND RESPONSIBILITIES

The provider will require all assistants, substitutes, contractors and non-client residents 12 years and older to notify them as soon as possible, but no later than the person’s next working day, when the person:

1. Has been convicted of any crime; or,
2. Has been or is being investigated by any governmental agency for any other act, offense, or omission. This includes any investigation related to the abuse or neglect of, or threat of abuse or neglect to a child.

The provider will then notify the certifying agency when they or any assistant, substitute, contractor or non-client resident 12 years and older have been convicted of any crime or are being investigated by any governmental agency for any other act, offense, or omission. The provider must report this information as soon as possible, but no later than the certifying agency’s next business day.

When a person begins residing at or is expected to reside at a provider’s home, the provider will notify the certifying agency as soon as possible, but no later than the certifying agency’s next business day in order that a Background Information Disclosure form and caregiver background check be completed for that person.

PROCESSING REHABILITATION REVIEW REQUESTS

The Rehabilitation Review Application form and any requested supporting materials must be completed within 90 days of the date the application is submitted. If the person requesting the review does not have good cause for failure to submit a completed application or supporting materials within that time frame, the rehabilitation approval must be denied.

REHABILITATION DECISION FORMULATION FACTORS

After reviewing the information obtained, the review panel will decide whether the person has demonstrated, by clear and convincing evidence, that s/he is rehabilitated for purposes of receiving certification approval or being an assistant, or contractor with or residing at the certified home. The panel will consider at least the following factors as applicable:

1. Personal reference checks and comments from employers, persons, and agencies familiar with the applicant and statements from therapists, counselors and other professionals.
2. Evidence of successful adjustment to, compliance with or proof of successful completion of parole, probation, incarceration or work release privileges.
3. Proof that the person has not had subsequent contacts with law enforcement agencies leading to probable cause to arrest or evidence of noncompliance leading to investigations by other regulatory enforcement agencies.
4. Any pending or existing criminal or civil arrest warrants, civil judgments or other legal enforcement actions or injunctions against the person.
5. Any aggravating or mitigating circumstances surrounding the crime, act or offense.
6. Evidence of rehabilitation, such as public or community service, volunteer work, recognition by other public or private authorities for accomplishments or efforts or attempts at restitution, and demonstrated ability to develop positive social interaction and increased independence or autonomy of daily living.
7. The amount of time between the crime, act or offense and the request for rehabilitation review, and the age of the person at the time of the offense.
8. Whether the person is on the sexual offender registry under §301.45 or similar authority.
9. A victim's impact statement, if appropriate.
10. Employment history, including evidence of acceptable performance or competency in a position and dedication to the profession.
11. The nature and scope of the person's contact with clients in the position requested.
12. The degree to which the person would be directly supervised or working independently in the position requested.
13. The opportunity presented for someone in the position to commit similar offenses.
14. The number, type and pattern of offenses committed by the person.
15. Successful participation in or completion of recommended rehabilitation, treatment or programs.
16. Unmet treatment needs.
17. The applicant's veracity.

REHABILITATION DECISIONS

The review panel will decide whether to approve, defer, or deny rehabilitation approval. The review panel will issue a written decision. If the review panel decides to defer a rehabilitation decision, the panel must state the reasons for the deferral. Unless otherwise agreed to by the requestor, the panel may defer a final decision for a period of not more than 6 months from the initial decision date.

REVIEW PANEL DECISION DISTRIBUTION

The review panel will send its decision to the requestor and a copy to the provider. The panel will also send a completed copy of the Rehabilitation Decision Report form to DHFS within 10 days of the decision date. If the certifying agency is a tribe, the review panel will also send a copy of the requestor's application materials.

REHABILITATION APPROVAL VIOLATION – MANDATORY WITHDRAWAL

The county or tribe that granted a person rehabilitation approval must withdraw the approval when the agency learns that the person has been convicted of a new crime, act or offense and is no longer eligible to be certified, an employee, or to contract with or reside at the provider's home if that crime that creates a bar with rehabilitation.

REHABILITATION APPROVAL VIOLATION – SUMMARY SUSPENSION

The county or tribe that granted a person rehabilitation approval may immediately temporarily rescind the rehabilitation approval when the agency has knowledge that the person has done either of the following:

1. The person failed to comply with or abide by any conditions or limitations imposed with the rehabilitation approval.
2. The person knowingly submitted false information or withheld pertinent information relevant to the rehabilitation request that otherwise could or would have affected the review panel's decision to grant the rehabilitation approval.

Within 10 working days of temporarily rescinding a rehabilitation approval the county or tribe must determine whether the new information related to the approval violation is valid and represents a risk of harm to the children in care. If the new information is valid and does represent a risk to the children in care, the county or tribe must withdraw the rehabilitation approval. This will mean that the bar with rehabilitation has been re-imposed and may result in the certification being revoked.

When a county or tribe withdraws a rehabilitation approval, it must issue a written decision that explains the reasons for the withdrawal and informs the requestor of their right to appeal the decision. The appeal process is the entire rehabilitation review process.

REHABILITATION APPROVAL TRANSFERS

A tribe may only grant rehabilitation approvals within the scope of its own certification authority. No rehabilitation approval granted by a tribe may be transferred outside the tribe's certifying authority.

CONTACTS

Questions regarding the caregiver background check can be directed to Rebecca Brueggeman at (608) 266-9703.